

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:06CR44**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
MARVIE JOE MOCK.)	
_____)	

THIS MATTER is before the court upon defendant’s Motion for Discovery and the government’s response. Defendant seeks copies of still photographs and the video tape of the alleged robbery. The government argues that “it is not the practice of this office to provide copies of video tapes for release to defense counsel.” Response, at ¶ 3. Rule 16(a)(1)(E), Federal Rules of Criminal Procedure, provides as follows:

Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

Fed.R.Crim.P. 16(a)(1)(E)(emphasis added). In moving for discovery, counsel for defendant has stated that she needs to review the videotape in order to adequately prepare for trial. Motion, at ¶ II.

In accordance with Rule 16, the government is not obligated to make copies for defendant’s use; however, the rule mandates that the government make photographs and

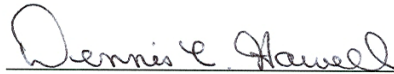
video tapes available for copying by defendant if they are in the government's possession and the item is material to preparing the defense or the government intends to use the material at trial. The court can find no exception to the rule based on a policy of the United States Attorney's Office.

ORDER

IT IS, THEREFORE, ORDERED that, if such materials are within the possession of the United States, that the government either

- (1) provide defense counsel with the requested copies as a professional courtesy;
- or
- (2) make such materials available for copying not later than October 13, 2006.

Signed: October 10, 2006

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Dennis L. Howell
United States Magistrate Judge

